



FEDERAL ELECTION COMMISSION
Washington, DC 20463

Donald F. McGahn II, Esq.
Jones Day
51 Louisiana Avenue, NW
Washington, DC 20001

JUL - 5 2016

RE: MUR 6941
NRA-PVF
NRA-ILA

Dear Mr. McGahn:

On June 16, 2015, the Federal Election Commission (the "Commission") notified the National Rifle Association of America Political Victory Fund and Mary Rose Adkins in her official capacity as treasurer ("NRA-PVF") and the National Rifle Association Institute for Legislative Action ("NRA-ILA"), your clients, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended (the "Act") and Commission regulations. A copy of the complaint was forwarded to your clients at that time.

On June 28, 2016, the Commission found, on the basis of the information in the complaint, and information provided by your clients, that there is no reason to believe that the NRA-PVF or the NRA-ILA violated 52 U.S.C. §§ 30104(b)(3)(A), 30118(b)(3)(B)-(C), 30118(b)(4)(A)(i) and 11 C.F.R. §§ 104.3(a)(4)(i), 114.5(a)(3)-(5) or 114.5(g)(1) with respect to allegations of failure to comply with requirements for soliciting contributions to a separate segregated fund and collecting and reporting contributor information. The Commission also voted to dismiss the allegation that the NRA-PVF violated 11 C.F.R. § 102.5(a)(2) by accepting funds not designated for a federal account. Accordingly, the Commission closed its file in this matter.

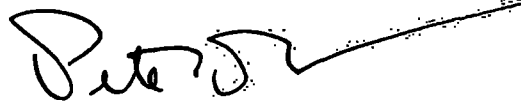
A political committee that finances both federal and non-federal political activity may only accept funds which are obtained in accordance with 11 C.F.R. § 102.5(a)(2). The Commission cautions the NRA-PVF to take steps to ensure that its conduct complies with the Commission's regulations at 11 C.F.R. § 102.5(a)(2).

Documents related to this matter will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66,132 (Dec. 14, 2009). The Factual and Legal Analysis, which explains the Commission's findings, is enclosed for your information.

Donald F. McGahn II, Esq.
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If you have any questions, please contact Dominique Dillenseger, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

A handwritten signature in black ink, appearing to read "Peter G. Blumberg". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Peter G. Blumberg
Assistant General Counsel

Enclosure
Factual and Legal Analysis

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FEDERAL ELECTION COMMISSION

FACTUAL & LEGAL ANALYSIS

RESPONDENTS: National Rifle Association of America Political
Victory Fund and Mary Rose Adkins in her
official capacity as treasurer
National Rifle Association Institute for Legislative Action

MUR: 6941

I. INTRODUCTION

This matter was generated by a complaint filed with the Federal Election Commission (the "Commission").¹ Complainant, Citizens for Responsibility and Ethics in Washington, alleges that the National Rifle Association's ("NRA") lobbying arm, the Institute for Legislative Action ("NRA-ILA") solicited \$125,153 from the general public but deposited the funds into the account of the NRA's separate segregated fund ("SSF"), the National Rifle Association of America Political Victory Fund and Mary Rose Adkins in her official capacity as treasurer ("NRA-PVF").² As a result, the Complaint argues that the solicitations were actually solicitations for NRA-PVF and were thus improper because they did not adhere to the requirements of solicitations for an SSF. The Complaint also alleges that NRA-PVF failed to report employer and/or occupation information for numerous contributors in the 2014 cycle.

Respondents deny the allegations, asserting that the contributions at issue were not solicited for the SSF but for NRA-ILA and were mistakenly deposited into the NRA-PVF account due to a coding error. Respondents argue that the amount of the misdeposit was small relative to contributions raised in the 2014 cycle, involved only a handful of non-members, and was promptly corrected when it was discovered. Finally, Respondents argue that the "best

¹ See 52 U.S.C. § 30109(a)(1).

² The NRA is a 501(c)(4) corporation. Compl. at 1. NRA-PVF is NRA's political action committee and is registered as a political committee with the Commission. See NRA-PVF, FEC Form 1, Statement of Organization, Amended, Nov. 19, 2015, <http://docquery.fec.gov/pdf/259/201511199003398259/201511199003398259.pdf>.

1 efforts” requirements for obtaining contributor information do not apply to contributions
2 solicited for NRA-ILA and that NRA-PVF does comply with the best efforts requirements when
3 soliciting contributions.

4 As discussed below, the information available in the record indicates that the
5 contributions at issue were solicited for NRA-ILA and not for NRA-PVF. Accordingly, the
6 Commission finds no reason to believe that NRA-ILA or NRA-PVF violated the Act or
7 Commission regulations with respect to the allegations regarding the solicitation of these
8 contributions.

9 Further, though the misdeposited funds did not meet the requirements for funds deposited
10 into a federal account, the misdeposits did not otherwise contain impermissible funds, were
11 refunded, and represent a small amount (approximately 0.2%) of the contributions raised by the
12 NRA for its lobbying arm and PAC in the 2014 election cycle. Accordingly, the Commission
13 dismisses with caution the allegation that NRA-PVF violated 11 C.F.R. § 102.5(a)(2).³

14 Finally, NRA-PVF has demonstrated that it used best efforts when collecting and
15 reporting contributor information for the 2014 election cycle. Accordingly, the Commission
16 finds no reason to believe that NRA-PVF violated the Act or Commission regulations with
17 respect to this allegation.

18 II. FACTUAL BACKGROUND

19 The Complaint is based on a *Yahoo News* article, dated April 21, 2015, which reported
20 that during 2014, the NRA-ILA solicited contributions from the general public through its
21 website that the group represented would benefit NRA-ILA, but were instead deposited into the

³ See *Heckler v. Chaney*, 470 U.S. 821 (1985).

1 NRA-PVF account.⁴ The article's author, Alan Berlow, an NRA member since 2011, reported
2 that early in the summer of 2014 he made two contributions in the amount of \$1.00 each to the
3 NRA-ILA, including one through the NRA-ILA's website and another through the NRA-PVF's
4 website. Berlow explained that with his first donation, made through the NRA-ILA website, he
5 accessed the "donate" page and entered his name, address, credit card information, and
6 contribution amount. After clicking "submit donation," Berlow was transferred to another
7 webpage with the NRA-ILA banner at the top, an NRA-ILA logo in bold letters at the bottom
8 and a URL with the NRA-ILA's initials. Berlow received a thank you on a page with an
9 NRA-ILA banner and then received an email from NRA-ILA thanking him for his donation.
10 However, Berlow's credit card statement showed a payment to NRA-PVF, which was confirmed
11 by a credit card representative. The *Yahoo* article included partial screenshots of what appeared
12 to be webpages of credit card bill showing the \$1.00 charge on July 7, 2014 to "NRA PVF
13 INTERNET." Berlow also reported receiving a note from NRA-PVF wishing him happy
14 holidays and noting that every dollar "contributed to NRA-PVF this year all added up to
15 invaluable victories in last month's elections."⁵

16 Berlow's second contribution for NRA-ILA was made through the NRA-PVF website.
17 According to Berlow, clicking a "Donate to the NRA-ILA" "button" at the bottom of the
18 NRA-PVF's website, directed him to NRA-ILA webpage where he made his donation. As with
19 the other contribution, Berlow received online and email thank you messages for contributing to

⁴ Compl. at 2, n.7 (citing Alan Berlow, The NRA's Brazen Shell Game with Donations, *Yahoo News*, April 21, 2015, available at <https://www.yahoo.com/politics/the-nras-brazen-shell-game-with-donations-a-116744915796.html>).

⁵ According to the Complaint, archived versions of NRA-ILA's website appear to match Berlow's description of the pages he visited when making the contribution and the screenshots included in the *Yahoo News* report. Compl. at 3-4.

1 NRA-ILA but his credit card statement showed that the contribution went to NRA-PVF, not
2 NRA-ILA.

3 In response to the *Yahoo News* article and the Complaint, NRA acknowledged that,
4 during a four-month period in 2014 when some funds solicited for NRA-ILA had been
5 inadvertently deposited into the NRA-PVF account as a result of a "database configuration error
6 in the NRA's back office," which was detected internally and corrected.⁶ Shortly after
7 discovering its error, NRA-PVF filed an amended disclosure report showing a \$125,153
8 disbursement to the NRA-ILA on April 28, 2015.⁷ The Reports Analysis Division ("RAD") sent
9 the NRA-PVF a Request for Additional Information ("RFAI") in response to the filing that
10 requested information on the purpose for the disbursement and how the original receipts were
11 disclosed.⁸ NRA-PVF explained that the disbursement was a refund for misdeposited
12 contributions previously disclosed on the May, June, July, August, September and October 2014
13 monthly reports. NRA-PVF stated that the contributions consisted mostly of unitemized
14 contributions from individuals who did not contribute more than \$200 in the calendar year, and
15 provided a list of the itemized contributions.⁹

16 Respondents request that the Commission take no further action, asserting that: the
17 complaint letter is procedurally deficient because it was submitted to the Audit Division rather
18 than to OGC and requested an audit rather than the initiation of an administrative enforcement

⁶ NRA Resp. at 2; *see also* Compl. at 3, n. 19 (citing Stephen Gutowski, NRA: Accusations in Yahoo News Report are False, *Washington Free Beacon*, May 29, 2015 available at <http://freebeacon.com/issues/nra-accusations-in-yahoo-news-report-are-false/>).

⁷ *See* NRA-PVF's Amended 2015 May Monthly Report <http://docquery.fec.gov/pdf/619/15971082619/15971082619.pdf>

⁸ *See* RFAI, dated November 24, 2015, referencing NRA-PVPs 2015 Amended Monthly Report.

⁹ *See* Miscellaneous Text (FEC Form 99) dated December 17, 2015 filed by NRA-PVF. The \$125,135.03 represents \$39,040.87 in itemized and \$86,094.16 in unitemized contributions; *see also* Supp.Resp. at 1.

1 matter;¹⁰ the allegations were based on a news report and thus cannot be used to justify opening a
2 MUR;¹¹ online donations at issue were solicited for NRA-ILA, not for NRA-PVP, and were
3 accidentally deposited into the NRA-PVP account due to a technical error; the problem was
4 promptly corrected when the error was discovered; the amount of misdeposited funds (\$125,153)
5 represents a small percentage (approximately 0.2%) of the \$50 million in contributions raised by
6 the NRA for its lobbying arm and PAC during the election cycle and only a few non-members
7 (33) made contributions.¹²

8 Respondents contend that an inadvertent deposit of funds into the wrong account because
9 of a "technical error" does not qualify as a "solicitation" because no one was being asked to give
10 money to NRA-PVF; that an SSF may accept contributions from persons otherwise permitted by
11 law to make contributions; and that even if this is considered a solicitation to the SSF, an
12 "accidental or inadvertent" solicitation is not deemed a violation so long as the SSF has used best
13 efforts to comply with the limitations and the method of solicitation is corrected forthwith after
14 the discovery of the erroneous solicitation.¹³

¹⁰ CREW's Complaint came in the form of a letter to the Audit Division requesting an audit of the NRA, but CREW noted in a footnote to the letter, that if the FEC construes its request for an audit as a complaint under 52 U.S.C. § 30109(a) and 11 C.F.R. § 111.4, CREW and its executive director should be treated as the complainants. CREW also attached a verification in accordance with 11 C.F.R. § 111.4(b)(2) and the letter otherwise meets all the requirements for a proper complaint. Accordingly, the Commission is properly processing CREW's letter as a complaint.

¹¹ Respondents acknowledged that funds solicited by NRA-ILA were deposited into the NRA-PVF account, so this point is moot.

¹² Resp. at 3-5.

¹³ Resp. at 4-5.

III. LEGAL ANALYSIS

A. Alleged Improper Solicitations Outside the Restricted Class and Failure to Include Required Disclosures

The Complaint alleges that Respondents may have violated the prohibition on solicitations to an SSF from outside the restricted class when contributions solicited from the general public on the NRA-ILA's and NRA-PVF's websites were deposited into NRA-PVF's account.¹⁴ The Complaint further alleges that, to the extent solicitations by NRA-ILA should be treated as NRA-PVF solicitations, the failure to inform potential donors of the political purposes of NRA-PVF or that their funds would be used in connection with a federal election led potential contributors to believe they were contributing to NRA-ILA.¹⁵ The Complaint requests that the Commission investigate Respondents' claims regarding the number of affected contributors, whether their solicitations complied with the law, and whether the misdeposits were inadvertent and promptly corrected.¹⁶

An incorporated membership organization may establish and administer an SSF¹⁷ and may solicit contributions to its SSF only from its noncorporate members, its executive and administrative personnel, and the families of both of these groups at any time (*i.e.*, the restricted

¹⁴ Compl. at 2.

¹⁵ Compl. at 6. The Complaint also alleges that the NRA-ILA and NRA-PVF websites lacked the requisite disclaimer for political committees indicating who paid for the website soliciting the donations. *Id.* All websites of a political committee available to the general public and all public communications by any person soliciting contributions must include a disclaimer that clearly states the full name and permanent street address, telephone number, or web address of the person who paid for the communication and that the communication is not authorized by any candidate or candidate's committee. 11 C.F.R. § 110.11(a), (b)(3), (c)(1). NRA-ILA is not a political committee registered with the Commission; therefore it is not required to display a disclaimer on its website. NRA-PVF on the other hand is a registered political committee and its website does include a proper disclaimer.

¹⁶ *Id.*

¹⁷ See 52 U.S.C. §§ 30118(b)(2)(C), 30101(4)(B); 11 C.F.R. § 114.5(b).

1 class”).¹⁸ Commission regulations require SSFs to include certain disclosures in its solicitations
2 for contributions, including “the political purposes of the fund.”¹⁹

3 The information available in the record does not support the Complaint’s assertions that
4 the solicitations for NRA-ILA should be treated as solicitations for NRA-PVF. First, the
5 description of the Berlow solicitations, as well as the partial screenshots of the webpages, make
6 it clear that the solicitations were for the NRA-ILA. The first solicitation was made through the
7 NRA-ILA website and the contributor knew at all times that the contribution was intended for
8 NRA-ILA. The second solicitation was made from the NRA-PVF website but was clearly
9 marked for NRA-ILA and processed through NRA-ILA webpages.

10 Indeed, the Complaint’s assertion appears to be based on the fact that the deposits ended
11 up in the NRA-PVF account. However, the response denies that the contributions were intended
12 for NRA-PVF and there is no available information in the record to the contrary. Further, the
13 amount of misdeposited funds involved only a small percentage of the total amount in
14 contributions received by the NRA-PVF and NRA-ILA during the 2014 election cycle.

15 An SSF may accept an unsolicited contribution that is otherwise lawful, from outside its
16 restricted class.²⁰ Based on the above, it appears that the contributions were solicited by
17 NRA-ILA for NRA-ILA, not NRA-PVF, but were inadvertently deposited into the SSF account.
18 Thus, the Commission finds no reason to believe that NRA-PVF or NRA-ILA violated
19 52 U.S.C. §§ 30104(b)(3)(A), 30118(b)(3)(B)-(C), 30118(b)(4)(A)(i) and 11 C.F.R.

¹⁸ 11 C.F.R. § 114.7(a); 52 § 30118(b)(4)(A)(i); 11 C.F.R. § 114.5(g)(1).

¹⁹ 52 U.S.C. § 30118(b)(3)(B)-(C); 11 C.F.R. § 114.5(a)(3)-(5).

²⁰ 11 C.F.R. § 114.5(j). We note that Commission regulations provide that an “[a]ccidental or inadvertent solicitation” of persons outside a restricted class “will not be deemed a violation,” if a corporation or SSF “used best efforts to comply with the limitations regarding the persons it may solicit and that the method of solicitation is corrected forthwith after the discovery of such erroneous solicitation.” 11 C.F.R. § 114.5(h).

1 §§ 104.3(a)(4)(i), 114.5(a)(3)-(5) or 114.5(g)(1) with respect to the allegations of solicitations for
2 an SSF outside the restricted class and failure to include required notices in solicitations for an
3 SSF.

4 **B. Improper Deposits Into a Federal Account**
5

6 The Complaint separately alleged that the solicitations failed to expressly state that the
7 contribution will be used in connection with a Federal election.²¹ As a political committee that
8 finances both federal and non-federal political activity, NRA-PVF may only accept funds subject
9 to the prohibitions, contribution limits and solicitation restrictions of the Act.²² The solicitation
10 requirements specify that funds deposited into such an account meet one of the following
11 conditions: (i) be designated for the federal account; (ii) result from a solicitation expressly
12 stating that the contribution will be used in connection with a federal election; or (iii) come from
13 contributors who are informed that all contributions are subject to the prohibitions and
14 limitations of the Act.²³

15 None of the notice requirements in section 102.5(a)(2) were met for the contributions that
16 were deposited into the SSF account. Commission precedents support finding violations of
17 section 102.5(a) where committees misdeposit into federal accounts contributions that belong in
18 non-federal accounts.²⁴ The purpose for the regulation is to ensure that funds deposited into a

²¹ Compl. at 6; 11 C.F.R. § 102.5(a)(2).

²² 11 C.F.R. § 102.5(a)(1)(ii) and (2). NRA-PVF's disclosure reports reflect disbursements for non-federal elections. *See e.g.*, 2015 December Monthly Report, Line 29 (Other Disbursements) Detailed Summary Page.

²³ 11 C.F.R. § 102.5(a)(2).

²⁴ In previous matters, the Commission has found reason to believe for violations of section 102.5(a)(2) for misdeposit of funds. However, those matters are distinguishable as the misdeposited funds were either excessive or from prohibited sources. In some instances, the Commission took no further action and cautioned Respondents for the misdeposits; in one such instance the Commission also took into consideration the minimal amounts involved. *See, e.g.*, MURs 3022 (California for Individual Rights) (finding reason to believe that two committees violated section 102.5(a)(2) by misdepositing two contributions, taking no further action and cautioning as to one of the two

1 federal account are from contributors that were informed of the intended use of their
2 contributions.²⁵ This notice requirement is separate from and in addition to the requirements that
3 the funds comply with the Act's source and amount limitations.²⁶

4 However, in an exercise of prosecutorial discretion, the Commission will not pursue
5 NRA-PVF for this potential violation of section 102.5(a)(2) under the circumstances here.

6 Accordingly, the Commission dismisses with caution the allegation that NRA-PVF violated
7 11 C.F.R. § 102.5(a) by accepting funds that were not designated for a federal account.²⁷

8 **C. Alleged Reporting Violations**

9 The treasurer of a political committee is responsible for disclosing the occupation and
10 name of employer of each individual whose contribution exceeds \$200 per election cycle either
11 by itself for when aggregated with other contributions from the same contributor.²⁸ When a
12 treasurer of a political committee shows that the committee used "best efforts" to obtain,
13 maintain, and submit the information required by the Act, the committee's reports will be

misdeposits), MUR 3325 (DDSCC *et al.*) (finding reason to believe that multiple committees violated section 102.5(a)(2) by misdepositing funds from various contributors, but taking no further action and cautioning as to several of the misdeposits due to the minimal amounts involved), MUR 3891 (Packard) (finding reason to believe that two committees violated section 102.5(a)(2) by misdepositing contributions from one contributor but taking no further action and cautioning as to the misdeposits under the circumstances -- one committee was defunct and the other had taken corrective action), MUR 4961 (DNC Services Corporation/Democratic National Committee) (finding reason to believe that Respondents misdeposited hundreds of contributions totaling millions of dollars in violation of section 102.5(a)(2)), and MUR 6106 (Minnesota Corn Growers Association *et al.*) (finding reason to believe that Respondents violated section 102.5(a) by accepting funds that were not designated for use in connection with federal elections).

²⁵ See Explanation and Justification for Prohibited and Excessive Contributions: Non-Federal Funds or Soft Money, 67 F.R. 49,073 (July 29, 2002).

²⁶ *Id.*

²⁷ See *Heckler v. Chaney*, 470 U.S. 821 (1985).

²⁸ 52 U.S.C. § 30104(b)(3)(A) and 11 C.F.R. § 104.3(a)(4).

1 considered in compliance with the Act.²⁹ Best efforts require, among other things, that within 30
2 days after the receipt of the contribution, the treasurer make at least one effort to obtain the
3 missing information, in either a written request or a documented oral request.³⁰

4 Complainant alleges that Respondents failed to request contributors' employer and
5 occupation for the \$125,153 in online contributions that were misdeposited into the NRA-PVF
6 account, and failed to report employer and occupation information for hundreds of contributors
7 in 2013 and 2014. As discussed above, the available information does not indicate that the
8 online contributions at issue were solicited by the NRA-ILA for the NRA-PVF. Second, while
9 NRA-PVF disclosure reports for the 2014 cycle reflects itemized contributions lacking
10 occupation or employer information, the NRA-PVF appears to have met the requirements for
11 demonstrating "best efforts" to obtain this information. In its response, NRA-PVF asserts that it
12 exercises best efforts to obtain contributor information and states that it uses the required
13 language under 11 C.F.R. § 104.7(b) on its solicitation forms.³¹ In addition, the NRA-PVF
14 procedures for obtaining the information, as set out in its response to an RFAI from RAD,
15 comply with the requirements for best efforts documentation under the RAD Review and
16 Referral Procedures for the 2013-2014 Election cycle.³² Finally, according to RAD, NRA-PVF

²⁹ 52 U.S.C. § 30102(i).

³⁰ 11 C.F.R. § 104.7(b).

³¹ Resp. at 4-5.

³² See RAD Review and Referral Procedures for the 2013-2014 Election Cycle (Best Efforts Documentation, pp. 80, 81); Request for Additional Information for the NRA-PVF 2013 Amended February Monthly Report, dated April 26, 2013, and the NRA-RVP Response, Miscellaneous Text (FEC Form 99) dated May 29, 2013.

1 disclosure reports for the 2014 election cycle show that it has filed amended schedules and
2 reports disclosing additional contributor information.³³

3 Accordingly, the Commission finds no reason to believe that NRA-ILA violated
4 52 U.S.C. § 30104(b)(3)(A) and 11 C.F.R. § 104.3(a)(4)(i) by failing to collect or report
5 contributor information for the \$125,153 in online contributions to NRA-ILA that were
6 inadvertently deposited into the NRA-PVF account and no reason to believe that NRA-PVF
7 violated 52 U.S.C. § 30104(b)(3)(A) and 11 C.F.R. § 104.3(a)(4)(i) by failing to collect or report
8 contributor information for its 2014 cycle itemized contributions.

³³ See generally NRA-PVF amended disclosure reports for the 2014 election cycle. In addition, a number of the misdeposited contributions that were itemized contain occupation/employer information.